

May 20, 2019

VIA ECF

The Honorable Lorna G. Schofield  
U.S. District Court  
Southern District of New York  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, New York 10007

Re: *Contant, et al. v. Bank of Am. Corp., et al.*,  
No. 17 Civ. 3139 (LGS) (S.D.N.Y.)

Dear Judge Schofield:

Pursuant to this Court's November 16, 2018 Order (ECF No. 176), the parties write to update the Court on the status of the above-captioned action.

**Pleadings**

On December 20, 2018, defendants Barclays Bank PLC; UBS AG; The Royal Bank of Scotland plc; Credit Suisse Group AG; Société Générale; HSBC Bank plc; MUFG Bank, Ltd.; Standard Chartered Bank; and BNP Paribas Group (collectively, "Foreign Defendants") jointly moved to dismiss plaintiffs' Second Consolidated Class Action Complaint ("SCCAC") (ECF No. 183) for lack of personal jurisdiction under Federal Rule of Civil Procedure 12(b)(2), which UBS Group AG joined. (ECF Nos. 197-200.) Plaintiffs filed their opposition (ECF Nos. 219-220) and supplemental letter (ECF No. 221) on January 28 and 31, 2019, respectively. Counsel for Defendant Credit Suisse Group AG contacted plaintiffs' counsel on February 15, 2019 to discuss voluntary dismissal of Credit Suisse Group AG. Foreign Defendants filed their reply on February 19, 2019. (ECF No. 228.) On that same day, plaintiffs voluntarily dismissed without prejudice Credit Suisse Group AG from the action. (ECF No. 226.) On May 17, 2019, this Court granted the Foreign Defendants' motion to dismiss as to MUFG Bank, Ltd., The Royal Bank of Scotland plc, Société Générale, and UBS Group AG, but denied the motion as to the remaining Foreign Defendants. (*See* ECF No. 263.)

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Non-Foreign Defendants’<sup>1</sup> answers were filed on January 11, 2019. (*See* ECF Nos. 205-216.)

### **Discovery**

Plaintiffs and Non-Foreign Defendants exchanged initial disclosures on February 11, 2019. Discovery was stayed as to Foreign Defendants until the Court’s ruling on their joint Rule 12(b)(2) motion to dismiss. Initial requests to and from the Foreign Defendants who remain in this case—Barclays Bank PLC; BNP Paribas Group; HSBC Bank plc; Standard Chartered Bank; and UBS AG—may be served 14 days from that ruling. (*See* ECF No. 176.)

Pursuant to this Court’s November 16, 2018 Order (ECF No. 176), Non-Foreign Defendants produced to plaintiffs documents and recordings produced in discovery in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* (S.D.N.Y. No. 13-cv-7789) (“FOREX”), as well as transactional data for spot FX Instrument transactions with entities identified as retail foreign exchange dealers (“RFEDs”) by plaintiffs in November 21, 2018 correspondence. Non-Foreign Defendants also produced transactional data for spot FX Instrument transactions with additional entities plaintiffs identified as RFEDs in correspondence dated December 21, 2018.

In light of the Court’s denial of the joint Rule 12(b)(2) motion to dismiss as to Foreign Defendants Barclays Bank PLC; BNP Paribas Group; HSBC Bank plc; Standard Chartered Bank; and UBS AG, Plaintiffs propose that the Court direct those defendants to produce to Plaintiffs within 30 days documents and recordings produced in discovery in *In re Foreign Exchange Benchmark Rates Antitrust Litigation* (S.D.N.Y. No. 13-cv-7789) (“FOREX”), as well as transactional data for spot FX Instrument transactions with entities identified as retail foreign exchange dealers (“RFEDs”) by plaintiffs in correspondence dates November 21, 2018 and December 21, 2018, consistent with the obligations on the Non-Foreign Defendants. (*See* ECF No. 258(8)(b).) Foreign Defendants Barclays Bank PLC; BNP Paribas Group; HSBC Bank plc; Standard Chartered Bank; and UBS AG do not object to this request.

On February 11, 2019, defendants BNP Paribas US Wholesale Holdings Corp. and BNP Paribas Securities Corp. served a first interrogatory on plaintiffs. On March 11, 2019, The Goldman Sachs Group, Inc. and Goldman Sachs & Co. LLC also served a first set of interrogatories on plaintiffs, as did Deutsche Bank AG and Deutsche Bank

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<sup>1</sup> In the context of this letter, “defendants” excludes settling defendants Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc.

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Securities Inc. On that same day, Non-Foreign Defendants served a first set of requests for production on plaintiffs. On April 2, 2019, plaintiffs served a first interrogatory on all defendants.

On March 14, 2019, plaintiffs initiated service of subpoenas on sixty-one third parties. Since April 5, 2019, Non-Foreign Defendants have served subpoenas on thirty-four third parties. On April 11, 2019, non-party FXDirectDealer, LLC filed a motion to quash the subpoena served upon them by plaintiffs, ECF No. 251, which this Court denied on April 18, 2019, ECF No. 254. To facilitate discovery, the parties have agreed to share documents or data produced in response to a subpoena or request of any kind issued in connection with the action, along with any accompanying cover letter or other transmittal communication, within seven days, to the extent such documents or data were not otherwise served on the other parties by the producing party.

On March 22, 2019, this Court entered a Deposition Protocol Order to govern the scheduling of depositions in this matter and the following two related matters: (i) *FOREX*; and (ii) *Allianz Global Investors GmbH, et al. v. Bank of America Corp., et al.* (S.D.N.Y. No. 18-cv-10364). (ECF No. 240.)

Pursuant to this Court's May 2, 2019 Order (ECF No. 259), the fact discovery deadline has been extended to February 3, 2020 and the case management conference originally scheduled for May 16, 2019, has been adjourned to January 9, 2020. In light of that Order, pre-motion letters in support of dispositive and class certification motions are due no later than two weeks before the January 9, 2020 case management conference (ECF No. 258).

The parties are not seeking the Court's intervention in any discovery disputes at this juncture.

Respectfully submitted,

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